



UNITED STATES PATENT AND TRADEMARK OFFICE

APR 23 2004

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Paper No. #9

In re Application of	: DECISION ON PETITION
George J. Vlahos	: TO WITHDRAW
Serial No. : 10/064,010	: HOLDING OF
Filed : June 4, 2002	: ABANDONMENT
For : Light Therapy Apparatus	:

This is a decision on petitioner's request filed via facsimile transmission on March 29, 2004, to review the holding of abandonment mailed February 10, 2004, for failure to respond to the Office action mailed July 23, 2003. The request is based on an allegation that applicant did not receive the Office action mailed July 21, 2003. There is no fee required for this petition.

The petition is **dismissed**. The application remains abandoned.

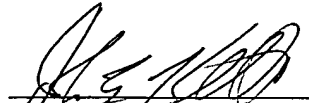
The records of the Office indicate that an Office action was mailed to applicant at the address of record on July 23, 2003. There is a strong presumption that mail properly addressed and delivered to the United States Postal Service is in fact delivered to the addressee. An allegation that an Office action was not received may be considered in a formal petition for the withdrawal of the holding of abandonment, in accordance with *Delgar Inc. v. Schuyler*, 172 USPQ 513. This presumption that the Office action was delivered to applicant may be overcome by a showing that the action was not, in fact, received. As part of the showing, applicant must submit (1) a statement by him, and/or by anyone else at applicant's correspondence address that would have handled the Office action, stating that the Office action was not received, (2) a statement attesting to the fact that a search of the file jacket and other records indicate that the Office action was not received, and (3) all supporting documentary evidence available, as proof contra to the presumption of the delivery of the Office action such as copies of records, which disclose the receipt of other correspondence mailed from the Office on or about the same date as the action in question but fail to disclose receipt of that action would be acceptable or copies of records in which the action would have been entered had it been received, for example, file jacket notations, calendar notations, docket records, etc.

The request filed March 29, 2004 includes item (1) but not (2) and (3). Petitioner has not provided a statement attesting to the fact that he has searched the file jacket and that of all other records that he keeps for the instant application, which search failed to indicate that the Office communication in question was received. Petitioner has failed to describe what records, if any, he keeps to let him know what papers he has received from the Office and the due dates for the responses that need to be filed. How and where is

the information regarding receipt of Office papers and mailing of responses kept? How does petitioner know a response is due? Is this information kept on a calendar? Separate sheet of paper? On the file maintained by petitioner? An explanation of where/how the above information is kept and copies of the pertinent papers should be submitted. To aid petitioner prepare a renewed petition, if that is petitioner's desire, enclosed is a copy of section 711.03(c) of the Manual of Patent Examining Procedure (MPEP), which section deals with petitions relating to abandonment. The area dealing with petitions to withdraw holding of abandonment based on failure to obtain an Office action has been highlighted.

Any request for reconsideration of this decision should be submitted within TWO (2) MONTHS from the mail date of this decision. The reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.181". Telephone inquiries regarding this decision should be directed to Special Programs Examiner Andres Kashnikow at (703) 308-1137.

Summary: Petition to Withdraw Holding of Abandonment is Dismissed pending the submission of a renewed petition.



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attachment: copy of section 711.03 (c) of the MPEP.